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Attorneys for Plaintiffs
KATHLEEN SMITH and MATTHEW DOWNING

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KATHLEEN SMITH and MATTHEW
DOWNING, on behalf of themselves and all
others similarly situated,

Plaintiffs.

V.

KEURIG GREEN MOUNTAIN, INC.

Defendant.

Case No. 4:18-cv-06690-HSG
Assigned to Hon. Haywood S. Gilliam, Jr.

POST-DISTRIBUTION ACCOUNTING

1 Plaintiffs Kathleen Smith and Matthew Downing (“Plaintiffs”) respectfully submit the
 2 below Post-Distribution Accounting pursuant to the Northern District of California’s Procedural
 3 Guidance for Class Action Settlements and the Court’s Order Approving Final Settlement and
 4 Judgment and Granting Plaintiffs’ Motion for Attorneys’ Fees, dated February 2, 2023 (Dkt. No.
 5 166).

6 **DISCUSSION**

7 This Court granted final approval of the Settlement pursuant to Federal Rule of Civil
 8 Procedure 23(b)(2) on February 2, 2023 (Dkt. No. 166). The Settlement includes injunctive relief,
 9 monetary relief for absent class members, payment of attorneys’ fees and costs, as well as an
 10 incentive award to the plaintiffs.

11 The injunctive relief set forth in the Settlement provides benefits to the Class by requiring
 12 changes to Defendant’s Recycling Representation¹ on all labeling, marketing, advertising, and
 13 promotional materials for the Challenged Products to indicate that the Challenged Products are not
 14 recycled in many communities. This qualifying language must also appear larger and in close
 15 proximity to the Recycling Representation. The injunctive relief fully remedies the alleged false
 16 representation at the heart of the case, which alleges that Defendant advertised and labeled the
 17 Challenged Products as recyclable in many communities, when, in fact, they are not.

18 In addition to the injunctive relief, the Settlement also authorizes monetary relief for class
 19 members in the amount of \$10 million. These monetary payments under the Settlement are
 20 described in detail in the Declaration of Scott M. Fenwick, Senior Director of Kroll Settlement
 21 Administration LLC, the Claim Administrator in this case (“Fenwick Decl.”), attached hereto as
 22 Exhibit 1.

23 The Settlement also provided for the recovery of a portion of Class Counsel’s attorneys’
 24 fees and costs in the amount of \$3,568,180 and provides incentive awards to Plaintiff Smith in the
 25 amount of \$5,000 and to Plaintiff Downing in the amount of \$1,000. Fenwick Decl., ¶2.

26 The Settlement further authorized approval of notice and administration costs not to exceed

27 ¹ Capitalized terms used but not defined herein shall have the meanings ascribed in the
 28 Stipulation of Settlement (the “Settlement Agreement”) entered in this Action.

1 \$1,150,000 and the distribution of any residual funds to two *cy pres* recipients: Ocean
2 Conservancy and Consumer Reports, Inc. Fenwick Decl. ¶¶2 and 7.

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4 Dated: May 20, 2024

LEXINGTON LAW GROUP

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/s/ Meredyth Merrow
6 Meredyth Merrow
7 Attorneys for Plaintiff

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Exhibit 1

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11 *Attorneys for Defendant*

12 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 KATHLEEN SMITH and MATTHEW
 14 DOWNING, on behalf of themselves and all
 others similarly situated,

15 Plaintiffs,

16 v.

17 KEURIG GREEN MOUNTAIN, INC.,

18 Defendant.

19 Case No. 4:18-cv-06690-HSG
 Assigned to Hon. Haywood S. Gilliam, Jr.

20 **DECLARATION OF SCOTT M. FENWICK
 OF KROLL SETTLEMENT
 ADMINISTRATION LLC RE: POST-
 DISTRIBUTION ACCOUNTING**

21 I, Scott M. Fenwick, declare as follows:

22 1. I am a Senior Director of Kroll Settlement Administration LLC (“Kroll”),¹ the Claim
 23 Administrator in the above-captioned case, whose principal office is located at 2000 Market Street,
 24 Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make
 25 this declaration on behalf of Kroll and myself. The following statements are based on my personal

26
 27 ¹ Capitalized terms used but not defined herein shall have the meanings ascribed in the Stipulation
 28 of Settlement (the “Settlement Agreement”) entered in this Action.

knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed to provide a post-distribution accounting to the Court of the \$10 million Cash Payment paid by Defendant following entry of the Court's Order Granting Final Approval of Class Action Settlement and Motion for Attorneys' Fees on February 27, 2023 (the "Final Approval Order").

2. The Court's Final Approval Order, among other things, approved the class action settlement and directed the Claim Administrator to implement the order in accordance with the terms of the Settlement Agreement, which included (a) an award of attorneys' fees and costs totaling \$3,568,180; (b) a service award of \$5,000 to Plaintiff Kathleen Smith and \$1,000 to Plaintiff Matthew Downing; (c) approval of notice and administration costs not to exceed \$1,150,000; and (d) the distribution of any residual funds to the two *cy pres* recipients.

3. As of May 20, 2024, Kroll has received 1,127,336 timely claims and fourteen (14) late claims. Of the 1,127,350 received, 619,317 have been determined to be Approved Claims and the remaining 508,033 are Rejected Claims.

4. Kroll has calculated the payment amount for each eligible claimant following the allocation guidelines set forth in Section III.B.4 of the Settlement Agreement.

5. On September 11, 2023, Kroll sent rejection notices to 124,242 claimants with Rejected Claims. As agreed to by counsel for the Parties, 383,775 Claim Forms with indicia of fraud were rejected without further action.²

6. On September 11, 2023, Kroll issued distribution payments to the 619,317 valid claimants. A copy of the payment letter is attached hereto as **Exhibit A**.

7. Following is a post-distribution and accounting summary.

Total Class Members identified by Defendant	1,839,891
Types of notice	Email, Media Publication
Notices emailed	1,839,891

² The remaining sixteen (16) rejected Claim Forms either did not contain contact information for the claimant or were received after rejection notices were sent, and therefore did not receive rejection notices.

1	Undeliverable Email Notices	309,802
2	Requests for Exclusion filed	12
3	Requests for Exclusion as a percent of the Class	0.0007%
4	Objections filed	2
5	Objections as a percent of the Class	0.0001%
6	Claim Forms submitted	1,127,350
7	Claim Forms as a percent of the Class	61.3%
8	Cash Payment amount	\$10,000,000.00
9	Administrative fees and costs	\$1,092,531.10
10	Class Counsel fees and costs	\$3,568,180.00
11	Class Counsel fees and costs as a % of the Cash Payment	35.7%
12	Service awards to Plaintiffs	\$6,000
13	Payment/distribution type	Checks, ACH, Venmo, Zelle, PayPal, E-Mastercard
14	Number of payments	619,317
15	Total distributed to Approved Claims	\$3,472,143.00
16	Average payment	\$5.61
17	Median payment	\$5.00
18	Smallest payment	\$5.00
19	Largest payment	\$36.00
20	Checks/payments not cleared	24,542
21	Amount of checks/payments not cleared	\$127,142.50
22	Ocean Conservancy payment (75%)	\$1,491,218.50
23	Consumer Reports, Inc. payment (25%)	\$497,072.83

I declare under penalty of perjury under the laws of the United States that the above is true and correct to the best of my knowledge and that this declaration was executed on May 20, 2024, in Inver Grove Heights, Minnesota.

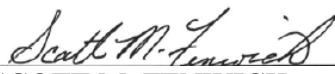

SCOTT M. FENWICK

Exhibit A

Check Number: <<Check Number>>
Check Amount: <<Check Amount>>
Check Date: <<mailing date>>

Smith v. Keurig Green Mountain
c/o Kroll Settlement Administration
PO Box 225391
New York, NY 10150-5391

<<Refnum Barcode>>
Class Member ID: <<RefNum>>
<<First Name>> <<Last Name>>
<<Address1>> <<Address2>>
<<City>>, <<State>> <<Zip>>

Class Member ID: <<Refnum>>

The attached check represents your full Cash Payment related to *Smith v. Keurig Green Mountain, Inc.*, United States District Court for the Northern District of California, Case No.: 4:18-CV-06690-HSG.

Please be advised that you have until **March 11, 2024**, to negotiate and/or deposit the check. Thereafter, your check shall be deemed void, and you will not be entitled to receive any payment under the Settlement.

You should consult with your tax advisor to determine the tax consequences, if any, of this settlement payment to you.

More information can be found at www.kcupsrecyclingsettlement.com or by calling toll-free 833-620-3588. You may also submit inquiries to the Claim Administrator through that website. Inquiries should reference your name, check number, and/or Class Member ID.

1 **CERTIFICATE OF SERVICE**

2 I, Meredyth Merrow, an attorney, hereby certify that on May 20, 2024, I caused a complete
3 and accurate copy of the foregoing document to be served via this Court's ECM/ECF notification
4 system, which will serve electronically to all participants in this case.

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/s/ Meredyth Merrow _____